

Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. Such persons specifically include caterers. See the enclosed copy of Section 130.2145. (This is a GIL.)

September 10, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 17, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA is requesting a General Letter Ruling from the Illinois Department of Revenue to determine the taxability of various transactions and steps to be taken to insure that AAA is in compliance with the Illinois Department of Revenue's tax code.

During calendar 2001, AAA entered into a contract with another party to operate their café, private dining facility, conference catering events, employee food pantries while providing management and administrative functions for certain data-gathering, security, clerical needs to meet their operating and reporting requirements.

AAA has been filing sales tax returns for IBT #. We have been working under the assumption that all constructive receipts of income as they related to the food and beverage sales were properly recognized and recorded with all sales taxes being reported and paid within the definition of our sales tax liability.

Recently, additional review suggested that AAA might have understated its tax liability depending on how subsidized operating income is viewed.

As background, a summary of our operations with pertinent facts is given below for your edification.

SUMMARY OF AAA OPERATIONS

CAFÉ:

- AAA purchases all food inventories for resale, hires and employs staff to prepare the food and beverages for resale and maintains the restaurant facilities.

- AAA prepares menus and pricing in coordination with the client and collects receipts which are taxed, reported and paid as such.
- AAA has no investment in the retail space provided for its operations or the equipment used in holding inventory or preparing the food.
- The client's employees can patronize the AAA café that is conveniently located on-site and serves competitively priced breakfast, lunch and snack selections or go elsewhere at their discretion.

PRIVATE DINING AND CONFERENCE CATERING

- In the normal course of business, the client solicits outside opportunities that are conducted regularly during conference meetings, meals and receptions.
- AAA solicits and coordinates reservations and manages these events by planning space, menus and service to facilitate these requests.
- Pricing is derived off a menu schedule of fixed prices for breakfasts, lunches, dinners, and snacks and is charged back to the client.
- The prices for these menu options were based on forecasted food costs per item, related labor and taxes to realize realistic margins.
- Sales tax is being paid based on revenue generated at the fixed menu prices.
- The business plan was to have earn sufficient income to support the operation after all variable costs were deducted.
- Users of these private dining and conference catering facilities can take advantage of these internal facilities or opt to have their events hosted off-site.

EMPLOYEE PANTRIES AND FRUIT BASKETS

- Another function served by AAA is to maintain a pantry where coffee, tea and soups are available to the employees,
- In addition to the pantries, fruit is made available to employees at selected sites around the offices,
- No sales tax is paid on purchases for the pantries or fruit baskets,
- Staff time is needed to prepare baskets and stock pantries,
- All items used in the pantry and fruit areas are purchased by AAA and delivered to the client's specifications,
- No money is charged to the employees for these products or services and taxes are not paid at the reseller level.

RECEPTIONISTS

- AAA hires, trains and directs staff receptionists within the facility to:
 - o To greet guests to the floor, direct them to their destination,
 - o Take general phone calls and route them,
 - o Book dining arrangements, and
 - o Perform other administrative tasks as time allows.
- The payroll is reimbursed by the client as services and no tax is paid.

PRE-OPENING PERIOD

During the early stages of the contract period, AAA engaged in several pre-opening projects including:

- Preparing scope of work assessment, business plans, feasibility studies, floorplans, etc.
 - Determining staffing requirements and recruiting, screening, and hiring employees,
 - Training employees in the client's requirements and food preparation,
 - Researching menu options, menu planning, pricing and costing, along with vendor qualifications and screening,
 - Assessing equipment requirements, preparing purchase orders and procuring the necessary capital items that were later reimbursed by the client under contract,
 - Conducting food tastings, internal promotions to create awareness of the café, private dining and conference catering options among the 500 employees of the client.
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- All of the costs and expenses incurred above were reimbursed.
 - Taxes were not paid on the initial food inventories.
 - Taxes were paid on all other purchases of real and personal property.

CLIENT SUBSIDY FOR OPERATING LOSSES

- In the event that AAA's costs exceeded the operating income from either the café's operations or managed services, losses would be reimbursed by the client in the form of a subsidy paid to AAA.
- At the outset of the contract, subsidies were considered unacceptable and corrective actions were expected to reduce any exposure to losses the client may have to bear. The client's position has not changed.
- During the first six months, losses in all operations were incurred beyond the cafeteria sales and private dining fixed menu pricing.
- No sales tax has been filed or paid on the subsidy to date.

MANAGEMENT FEE

- The contract also provided that AAA would be compensated with a management fee as profit on the venture.

RECAP OF REQUEST FOR GENERAL LETTER RULING

1. Are the client's subsidies paid to AAA for losses in excess of revenue subject to sales tax?
2. Do stocking employee food pantries and distributing fruit baskets constitute a taxable event for sales tax purposes given that the client reimburses all costs paid by AAA for this service?
3. Is there any sales tax consequence to the initial investment and subsequent reimbursement as described above in the pre-opening operations where no sales were made ?

4. Will the salaries and related employment expenses involved with staffing the receptionists be exempt from sales tax?
5. Is the Management Fee paid to AAA for management and administrative services subject to sales tax?

APPEAL FOR ABATEMENT OF LATE PAYMENT PENALTY

In consideration of AAA's proactive efforts at identifying these issues, will the Illinois Department of Revenue be amenable to abating the associated penalties?

Please contact me.

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. Such persons specifically include caterers. See the enclosed copy of Section 130.2145.

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, ... and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever...." See 35 ILCS 120/1. As indicated by this definition, a retailer's cost of doing business is not deductible from his gross receipts. This principle is also articulated in Section 130.410 of the Department's rules, enclosed.

As a result, tax is imposed upon a caterer's entire gross receipts from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor and set-up and delivery. Each of these items is a part of the cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items.

Subsidies, paid to AAA for losses in excess of revenue, are not gross receipts subject to tax. See, Chet's Vending Service, Inc. v. Department of Revenue (1978), 71 Ill. 2d 38. The stocking of food pantries and distribution of fruit baskets are subject to Retailers' Occupation Tax as you are paid for this service.

With regard to complimentary food and beverages given away at pre-opening events, persons who give merchandise away to others are considered to be the end users of such items being given away. As such, donors owe Use Tax on the donor's cost price of the tangible personal property that is transferred.

Persons who are engaged in activities in which no tangible personal property is transferred do not incur tax liability. The Retailers' Occupation Tax, Use Tax, Service Use Tax and Service Occupation Tax apply only when there is a transfer of tangible personal property. It is unlikely that the receptionist charges you have described would be subject to tax. However, it is possible that such a charge is taxable, if the charges were related to AAA's sales of food, e.g., service charges at a catered event. In this instance, such charges would be a cost of doing business and not deductible from the gross receipts subject to tax.

The Department's Board of Appeals administers a voluntary disclosure program that can provide for limited liabilities for participants who come forward and disclose their liabilities. Please see the enclosed copy of 86 Ill. Adm. Code 210.126 for information about the voluntary disclosure program.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.